GAHC010161192026

2026:GAU-AS:15597

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Bail Appln./2184/2026

NARAYAN SAIKIA
S/O LATE SINDHURAM SAIKIA
R/O NO. 2 BHULABORI, P.S. NARAYANPUR, DIST. LAKHIMPUR, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PP, ASSAM

2:SMTI MAINU SAIKIA
W/O SRI HIRAKJYOTI SAIKIA
R/O BHULABORI
P.S. NARAYANPUR
DIST. LAKHIMPUR
ASSAM

Advocate for the Petitioner : MR M H AHMED, I AMIN

Advocate for the Respondent : PP, ASSAM, MS. P CHOUDHURY, Amicus Curiae, R2

BEFORE
HON'BLE MRS. JUSTICE MITALI THAKURIA

O R D E R

Date : 14.10.2026.

Heard Mr. M.H. Ahmed, learned counsel appearing for the accused

petitioner. Also heard Mr. K.K. Das, the learned Addl. P.P., Assam appearing on behalf of the State respondent as well as Ms. P. Choudhury, learned Amicus Curiae appearing for the respondent No.2/informant.

2. This is an application under Section 483 of BNSS, 2023 praying for grant of bail to the accused petitioner, namely, Narayan Saikia who is in jail since 04.05.2026, in connection with POCSO Case No.59/2026 (corresponding with the Narayanpur P.S. Case No. 15/2026), under Section 6 of the POCSO Act, 2012, read with Sections 65(2)/64(2)(f)/64(2)(m) of the BNS, 2023, pending in the Court of learned Special Judge (POCSO), North Lakhimpur.

3. The scanned copy of the TCR is received and perused the same.

4. It is submitted by Mr. Ahmed, the learned counsel that the present accused petitioner is innocent and he has not committed any such offence as alleged in the FIR. The accused petitioner is a respectable person of the locality and he has no criminal antecedent and to that regard one certificate was also issued by the concerned Gaonburha. Mr. Ahmed, the learned counsel further submitted that the accused petitioner is in the custody for since 162 days and till date, the trial is not yet commenced and no evidence is recorded till date. He further submitted that the accused petitioner is a respectable person of the locality and 62 years of age and only for some land dispute and previous grudge, a false and concocted case is lodged against the present accused petitioner. The learned counsel further submitted that though the case is charge sheeted under Section 6 of the POCSO Act and the learned Special Judge (POCSO), North Lakhimpur also framed the charge under Section 6 of the POCSO Act. But considering the statement made in the FIR etc., it ought to

have been registered and charge sheeted at best under Section 10 of the POCSO Act, wherein the punishment prescribed is 5 to 7 years.

5. In support of his submission, Mr. Ahmed, the learned counsel for the accused petitioner cited a decision of this Court passed by a coordinate Bench, reported in (2024) 2 GLT 751 (State of Mizoram vs. Sh. R. Vanlaltura), wherein also in a similarly situated circumstances, the accused was convicted only under Section 8/10 of the POCSO Act. Accordingly, the learned counsel submitted that the accused petitioner being the permanent resident and respectable person of the locality, there is no chance of absconding. Rather he will regularly appear in the Court of learned Special Judge (POCSO), North Lakhimpur and will face the trial.

6. Mr. Das, the learned Addl. P.P., Assam raised vehement objection and submitted that from the statement made in the FIR itself, *prima facie* it reveals that a under Section 6 of the POCSO Act is made out, wherein the victim is stated to be a minor girl below 12 years. That apart, it is the case of the prosecution that the accused had committed similar kind of offence not only once, but on many occasions. Mr. Das, the learned Addl. P.P., Assam further submitted that the statement made in the FIR completely corroborates the statement of the victim recorded under Section 180 and 183 of the BNSS, 2023. He further submitted that as per Section 3 of the POCSO Act, the definition of penetration is given, wherefrom also the case can be established under Section 4/6 of the POCSO Act. Mr. Das further submitted that the accused petitioner used to come to the house of the victim as a teacher and as such, he being in a pre-dominant position, has every chance of tampering or hampering with the evidence of the prosecutrix as well as the vital witnesses and hence, the prayer

for bail for the accused petitioner may not be considered at this stage.

7. Ms. Choudhury, the learned Amicus Curiae appearing for the respondent No.2/informant also submitted that during the investigation, the police collected sufficient materials, wherein the statement of the victim as well as the statement of the other witnesses were also recorded, which *prima facie* establishes a case under Section 6 of the POCSO Act and the victim is stated to be a minor, aged 11 years of age. The accused petitioner being an elderly one, the victim also used to address him as grandfather but in spite of the relationship as well as the age, he had committed such nature of act with the victim. Ms. Choudhury, the learned Amicus Curiae also raised objection accordingly and submitted that it is not at all a fit case to allow the accuse petitioner to go on bail at this stage.

8. Heard the submissions made by learned counsel for both sides and also perused the scanned copy of the TCR received from the learned Trial Court.

9. It is seen that the case has already been charge sheeted and the charge is also framed against the accused petitioner under Section 6 of the POCSO Act and the case is at the stage of evidence. It is also the admitted position that the accused petitioner is in the custody for last more than five months but till date, the prosecution could not examine any witness.

10. Mr. Ahmed, the learned counsel for the accused petitioner basically emphasized on the point that the case does not fall under Section 6 of the POCSO Act, under which the case has been charge sheeted and charge is also framed accordingly by the learned Special Judge (POCSO), North Lakhimpur.

11. Citing a case of the coordinate Bench, it is emphasized that at best it may be a case under Section 10 of the POCSO Act. But as per definition of Section 3 of the POCSO Act, such nature of case can also be come under Section 3 of the POCSO Act, punishable under Section 4/6 of the POCSO Act, wherein if there is any penetrative sexual assault by any object.

12. It is seen that *prima facie* there is sufficient materials to file the charge sheet against the accused petitioner and on the basis of the statement made by the victim under Section 180 and 183 of the BHSS, 2023, the charge is also framed under Section 6 of the POCSO Act. Further it is seen that admittedly the victim is a girl below 12 years and as per the allegation, the accused petitioner had committed the offence on several occasions, during absence of her mother. Further it is seen that the accused petitioner is admittedly in pre-dominant position who used to come to the house of the victim to take her tuition and the victim addressed him as grandfather.

13. Thus the probability of hampering or tampering with the evidence of the vital witnesses, specially the victim/prosecutrix and the informant cannot be denied at this stage. After recording of the evidence or at the end of the trial, the case may be established in any other Sections of the POCSO Act but only considering this aspect of the case, bail cannot be considered at this stage, wherein the victim is a girl of 11 years of age and her evidence is yet to be recorded.

14. Considering all these aspects of the case and the nature of allegations brought against the accused petitioner, this Court do not find it to be justified to allow the petitioner to go on bail at this stage and accordingly, the bail petition

stands rejected.

15. However, the learned Trial Court is hereby directed to examine the vital witnesses of the case, within a reasonable period.

16. In terms of above, the bail application stands dismissed.

JUDGE

Comparing Assistant